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9 CALIFORNIA FORENSIC MEDICAL GROUP, INC.

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 JESSE HERNANDEZ, CAIN AGUILAR,
13 HA COBB, SUSAN DILLEY, CONNIE
14 DOBBS, SEAN ESQUIVEL, RAMONA
15 GIST, MARTHA GOMEZ, GEORGE
16 GREIM, DENNIS GUYOT, JASON HOBBS,
17 GLENDA HUNTER, ALBERT KEY,
18 BRANDON MEFFORD, WESLEY
19 MILLER, RICHARD MURPHY, JEFF
20 NICHOLS, ANGEL PEREZ, SARAB
21 SARABI, CLYDE WHITFIELD, and
22 ROBERT YANCEY, on behalf of themselves
23 and all others similarly situated,

24 Plaintiffs,

25 v.

26 COUNTY OF MONTEREY; MONTEREY
27 COUNTY SHERIFF'S OFFICE;
28 CALIFORNIA FORENSIC MEDICAL
GROUP, INCORPORATED, a California
corporation; and DOES 1 to 20,

Defendants.

Case No. CV 5:13 2354 PSG

**DEFENDANT CALIFORNIA
FORENSIC MEDICAL GROUP,
INC.'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE
RULE 12(b)(6)**

Hearing Date: June 10, 2014
Hearing Time: 10:00 a.m.
Hearing Dept.: 5

Action Filed: May 23, 2013
Trial Date: None yet
Judge: Hon. Paul Singh Grewal

I. INTRODUCTION

Plaintiffs' Second Am ended Complaint contains eight separate causes of action concerning the care and treatment of various inmates in the Monterey County Jail. Essentially, plaintiffs' alleged defendants were and are deliberately indifferent to plaintiffs'

1 mental and physical healthcare, physical security and safety. In addition, the Second
 2 Amended Complaint asserts CFMG, the entity which has “contract[ed] with the [Monterey
 3 County] Sheriff’s Office that . . . provides all health care services to prisoners in the Jail,
 4 including medical and mental health care” has violated Title III of the Americans with
 5 Disabilities Act in the context of their Sixth Cause of Action. See Plaintiffs’ Second
 6 Amended Complaint at ¶34.

7 Defendant CFMG now moves in joinder with defendants County of Monterey and
 8 Monterey County Sheriff’s Office to dismiss plaintiffs Robert Yancy, Richard Murphy,
 9 Dennis Guyot, Glenda Hunter, Martha Gomez, Wesley Miller, Jeffrey Nichols, Sarab
 10 Sarabi and Albert Keys’ claims in their entirety because said plaintiffs either lack standing
 11 to bring this injunctive and declaratory action, or in the alternative their claims are mooted
 12 by virtue of their release from the Monterey County Jail. Defendant CFMG now further
 13 moves to dismiss plaintiffs’ Sixth Cause of Action against it on the basis that plaintiffs
 14 have failed to state a claim pursuant to Rule 2(b)(6) insofar as CFMG does not own, lease
 15 or operate a place of “public accommodation” pursuant to 42 U.S.C. §12181(7)(F).

16 II. ENABLING AUTHORITY

17 Federal Rule of Civil Procedure Rule 12 permits a party to assert defenses by motion,
 18 including the defense of plaintiff’s failure to state a claim upon which relief can be granted.
 19 Federal Rule of Civil Procedure Rule 12(b)(6). Rule 12(b)(6) affords a defendant an
 20 opportunity to test whether, as a matter of law, plaintiff is entitled to legal relief even if
 21 everything alleged in complaint is true. *Mueller v. Gallina*, (2004) 311 F.Supp. 2d 606. A
 22 Complaint cannot survive a Rule 12(b)(6) motion to dismiss merely by setting forth all of
 23 elements of causes of action pled, since Rule 12(b)(6) was also designed to screen out cases
 24 where a complaint stated a claim based on a wrong for which there was clearly no remedy
 25 and for which no relief could possibly be granted. *Port Auth. v. Arcadian Corp.*, (1999,
 26 CA3 N.J.) 189 F.3d 305. Dismissal of a Complaint is appropriate when the Complainant
 27 fails to allege a cognizable legal theory or sufficient facts to support such theory *Balistreri*
 28 *v. Pacifica Police Dept.*, (9th Cir. 1988) 901 F.2d 696, 699.

1 authorities in support of their Motion to Dismiss in addition to all requests for judicial
2 notice, declarations and exhibits thereto filed in support of the motion.

3 Defendant CFMG requests the entirety of the claims of plaintiffs Robert Yancy,
4 Richard Murphy, Dennis Guyot, Glenda Hunter, Martha Gomez, Wesley Miller, Jeffrey
5 Nichols, Sarab Sarabi and Albert Key be dismissed.

6 **B. Plaintiffs' Sixth Cause of Action for ADA Violations Pursuant to Title III**
7 **Should Be Dismissed Because Title III Does Not Apply to CFMG at the**
8 **Monterey County Jail.**

9 Title III of the Americans with Disabilities Act provides in part that “no individual
10 shall be discriminated against on the basis of disability in the full and equal enjoyment of
11 the goods, services, facilities, privileges, advantages, or accommodations of any place of
12 public accommodation by any person who owns, leases (or leases to), or operates a place
13 of public accommodation.” ADA § 302(a), 42 U.S.C. § 12182(a). Essentially, Title III of
14 the ADA requires a plaintiff plead and prove the following elements: 1) a plaintiff was
15 disabled within the meaning of the Act; 2) the plaintiff was discriminated against on the
16 basis of that disability; and 3) the defendant owns, leases or leases to or operates a place of
17 public accommodation. For the purposes of this motion alone, CFMG assumes plaintiffs
18 have sufficiently plead the first and second elements in their Second Amended Complaint.
19 CFMG moves to dismiss plaintiffs' Sixth Cause of Action on the basis that it does not own,
20 lease or operate a “place of public accommodation.” As a matter of law, Title III is
21 therefore inapplicable to CFMG, and defendant's motion to dismiss pursuant to Rule
22 12(b)(6) should be granted.

23 Title III's general anti-discrimination provision refers to discrimination on the basis
24 of disability by the owner, lessor, lessee or operator of any “place of public
25 accommodation.” 42 U.S.C. § 12182(a). A place of public accommodation has been
26 intentionally defined by 42 U.S.C. § 12181(7) at subparts (7)(A) through (7)(L). Specific
27 to this action, section 12181(7)(F) provides: “[t]he following private entities are considered
28 public accommodations for purposes of this subchapter, if the operations of such entities

1 affect commerce—. . . (F). . . a professional office of a health care provider, hospital, or
2 other service establishment.”

3 In the context of this Second Amended Complaint at the Sixth Cause of Action
4 against CFMG, plaintiffs assert, without basis, that CFMG itself is a “place of public
5 accommodation” in that it “owns, leases, leases to, or operates a professional office of a
6 health care provider, hospital, or other service establishment.” Plaintiffs’ Second Amended
7 Complaint at ¶398. This language is lifted precisely from 42 U.S.C §12181(7)(F) and it is
8 on this basis alone that plaintiffs claim CFMG is subject to suit under Title III of the ADA.

9 CFMG is not an owner, lessor/lessee or operator of a place of public accommodation.
10 As a matter of law, Title III is therefore inapplicable to CFMG and plaintiffs’ Sixth Cause
11 of Action should be dismissed.

12 The purpose of Title III of the ADA was to apply to equal access for the disabled to
13 physical services of a defined place of public accommodation. See *Pappas v. Bethesda*
14 *Hosp. Ass’n*, (1994) 861 F.Supp.616, 620. The only physical place described in plaintiffs’
15 Second Amended Complaint is the Monterey County Jail. A jail is undisputedly **not** a
16 place of public accommodation. It not neither enumerated within the statutory definition
17 of 42 U.S.C. §12181, and is not a place “open to the public.” See e.g. *Disabled Rights*
18 *Action Comm. v. Las Vegas Events, Inc.*, (2003) 375 F.3d 861, 873; *Debord v Board of*
19 *Educ.* (1997) 126 F.3d 1102, cert. denied (1998)523 U.S. 1073. Title III does not apply to
20 jails, or to any part thereof. See, e.g. *Baaske v. City of Rolling Meadows* (2002) 191
21 F.Supp.2d 1009 (Title III of ADA does not apply to public entities.)

22 By way of converse illustration, interpreting case law as well as the plain language
23 of the statute have clearly defined a physician’s office, a dentist’s office, a medical clinic
24 and a hospital, in addition to hotels, inns, bars, arenas, etc. as places of public
25 accommodation to satisfy Title III of the ADA. See, e.g. *Mayberry v. Von Valtier* (1994)
26 843 F.Supp.1160 [physician’s office] ; *D.B. v Bloom* (1995) 896 F. Supp.166 [dentist
27 office]; *Sharrow v Bailey* (1995) 910 F.Supp.187 [medical clinic]. CFMG, as defined by
28 plaintiffs in their Second Amended Complaint, is none of these types of “public

1 accommodations.” Public accommodations are precisely that: open and usable by the
2 public. The Monterey County Jail could be no further from this legal definition.

3 Further, in addition to CFMG and/or Monterey County Jail not being a place of
4 public accommodation in accord with Title III, it is undisputed that CFMG is neither an
5 owner, lessor/lessee or operator of the alleged “place of public accommodation,” i.e. the
6 jail, or any part thereof. CFMG therefore negates an additional second prong of Title III’s
7 public accommodation regulation. Since CFMG is neither the owner, lessor/lessee or
8 operator of the Monterey County Jail, even if the jail could somehow be deemed a place of
9 public accommodation, as a matter of law, CFMG is not the responsible entity for the jail
10 under Title III.

11 In their Second Amended Complaint, plaintiffs claim CFMG is the “entity [which]
12 has “contract[ed] with the [Monterey County] Sheriff’s Office that . . . provides all health
13 care services to prisoners in the Jail, including medical and mental health care.” Plaintiffs’
14 Second Amended Complaint at ¶34. While CFMG is alleged to be the sole provider of
15 such medical services to plaintiffs, there are no facts alleged in the Second Amended
16 Complaint that CFMG “owns” the Monterey County Jail or any part thereof. There are no
17 facts alleged in the Second Amended Complaint which describe CFMG as a lessor or lessee
18 of the Monterey County Jail, and indeed no description or provision of a valid lease
19 subjecting CFMG to liability under Title III has been provided by plaintiffs. Similarly,
20 there are no facts alleged within the Second Amended Complaint to support CFMG as the
21 “operator” of the Monterey County Jail. Indeed, by plaintiffs’ own allegations, CFMG is
22 an independent contractor with the County of Monterey. Plaintiffs’ Second Amended
23 Complaint at ¶34. The Northern District Court has previously held an independent
24 contractor could not be liable under the ADA without some nexus establishing he was an
25 “operator.” *Aikins v. St. Helena Hosp* (1994) 843 F.Supp 1329. Rather than set forth such
26 a nexus, plaintiffs have prima facie refuted it, stating that the Monterey County Sheriff’s
27 office is responsible for the day-to-day operations of the Jail facilities, including
28 promulgating policies and procedures for the operation of the facilities and that “by law it

1 retains the ultimate authority over and any responsibility for the health care, treatment, and
 2 safekeeping of prisoners in the Jail.” Plaintiffs’ Second Amended Complaint at ¶33. Since
 3 there is no rational basis to conclude CFMG is the operator of Monterey County Jail, and
 4 since plaintiffs own claim s circum vent su ch a finding, plaintiffs’ Title III claim is
 5 inapplicable to defendant and defendant’s motion to dismiss should be granted.

6 In sum, for plaintiffs’ Title III claim to survive defendant’s instant motion, this Court
 7 must find both that the Monterey County Jail is indeed a place of public accommodation,
 8 and CFMG is the owner, lessor/lessee or operator of that public place specifically under 42
 9 U.S.C. §12181(7)(F). Neither of these propositions are supportable, and neither have been
 10 properly alleged in plaintiffs’ Second Amended Complaint. Undisputedly, plaintiffs seek
 11 a remedy for alleged violations of the ADA. However, that remedy does not lie with
 12 Title III, and does not lie with California Forensic Medical Group. Defendants’ Motion to
 13 Dismiss based on plaintiffs’ failure to state a claim in their Sixth Cause of Action should
 14 be granted.

15 IV. CONCLUSION.

16 For the foregoing reasons, defendant California Forensic Medical Group respectfully
 17 requests plaintiffs Robert Yancy, Richard Murphy, Dennis Guyot, Glenda Hunter, Martha
 18 Gomez, Wesley Miller, Jeffrey Nichols, Sarab Sarabi and Albert Key be dismissed from
 19 this action in their entirety , and further respectfully requests plaintiffs’ Sixth Cause of
 20 Action against CFMG for violations of Title III of the ADA be dismissed.

21 Respectfully submitted,

22 DATED: May 2, 2014.

BERTLING & CLAUSEN, L.L.P.

24 By: /s/ Jemma Parker Saunders
 25 Peter G. Bertling
 26 Jemma Parker Saunders
 27 Attorneys for Defendant
 28 CALIFORNIA FORENSIC
 MEDICAL GROUP, INC.